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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2421 and 2422

Meaning of Terms as Used in This Subchapter; Representation Proceedings

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Federal Labor Relations Authority proposes to revise its regulations regarding the meaning of certain terms used in Subchapter C (Part 2421) and representation proceedings (Part 2422). These proposed revisions will streamline the regulations and make the rules more flexible in addressing the representational concerns of agencies, labor organizations, and individuals.

DATES: Comments must be received on or before September 18, 1995.

ADDRESSES: Mail or deliver written comments to the Office of Case Control, Federal Labor Relations Authority, 607 14th Street NW., Washington, DC. 20424-0001. Copies of all written comments will be available for inspection and photocopying between 8 a.m. and 5 p.m., Monday through Friday, in Suite 415 at the above address.

FOR FURTHER INFORMATION CONTACT: James H. Adams, Office of Case Control, (202) 482-6540.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority established a Task Force to study and evaluate Part 2422 of its regulations—the regulations concerning representation proceedings. To this end, the Task Force conducted focus groups to solicit and consider customers' views prior to proposing these revisions. An additional focus group meeting has been scheduled for August 29, 1995 at the FLRA's Headquarters, 607 14th St. N.W., Washington, D.C. 20424, 2nd Floor Agenda Room, at 10:00 a.m.

Persons interested in attending this meeting on this proposed rulemaking should call or write the point of contact listed in the preceding section to confirm attendance.

Sectional analyses of the proposed amendments to Part 2421—Meaning of Terms As Used in This Subchapter and the proposed revisions of Part 2422—Representation Proceedings are as follows:

Part 2421

Section 2421.11—The definition of “party” is clarified to incorporate the statutory definition of the term “person” (an individual, labor organization, activity or agency).

Section 2421.18—The term “petitioner” is not defined in the current regulations. This section now defines “petitioner.”

Section 2421.19—The term “eligibility period” is not defined in the current regulations. This section now defines “eligibility period” in connection with elections.

Section 2421.20—The term “election agreement” is not defined in the current regulations. This section now defines “election agreement.”

Section 2421.21—A new term, “affected by issues raised,” used throughout the proposed regulations, is defined in this section. The term has been added to ensure that all appropriate entities are afforded the opportunity to participate in a proceeding.

Section 2421.22—The term “determinative challenged ballots” is not defined in the current regulations. This section now defines “determinative challenged ballots.”

Part 2422

Section 2422.1—In a significant proposed change, this section consolidates in one petition the seven separate petitions (RO, DR, RA, CU, AC, UC, DA) provided for in Part 2422 of the current regulations. This single petition permits resolution of all issues that may be raised concerning the representation of employees by labor organizations covered by the Statute and obtains the same type of results provided for by using the current petitions. All of the current petitions are incorporated into this section.

Combining the current seven petitions into a single petition simplifies the current multiple filing requirements. A

single petition avoids the procedural issues that arise when a petitioner “checks the wrong box” and files the wrong petition. A single petition also provides a more flexible approach to complicated representation matters.

Many of the current rights and obligations that flow to parties while a representation petition is being processed are dependent upon the type of petition that has been filed. The proposed regulations contain a substantive rule in section 2422.34 to guide the parties' conduct while the new petition is processed.

Section 2422.2—This section provides that, with one exception, the new petition may be filed by any individual, labor organization, activity or agency, or combination of these. The one exception, consistent with section 7111(b) of the Statute, is that a petition requesting an election to either elect or decertify a labor organization and requiring a showing of interest may be filed only by an individual or a labor organization. A petition may be filed as to matters relating to majority status (if the activity or agency has a good faith doubt, based on objective considerations, that a current recognized or certified labor organization represents a majority of the employees in an existing unit) or other matters relating to representation (e.g., questions concerning whether a current unit continues to be appropriate because of a substantial change in the character and scope of the unit). Current pre-filing requirements applicable to UC petitions are eliminated.

Section 2422.3—The new petition is described in this section. This section also contains, in separate subsections, requirements for: compliance with section 7111(e) of the Statute; submission of a showing of interest to support a request for an election; and certification for a dues allotment.

The parties will be required to name in the petition the activity(ies), agency(ies), labor organizations and bargaining units affected by issues raised in the petition, as well as to state clearly and concisely the issues raised in the petition and the results the petitioner seeks. This section facilitates participation by all labor organizations, agencies and activities that have an interest in the issues raised in the petition.

Section 2422.4—This section consolidates service requirements and applies to all documents unless the regulations specifically provide otherwise. The section includes 2 options concerning the service of supporting documentation. Under Option 1, supporting documentation, with the exception of showings of interest, would be served on all affected parties. Under Option 2, supporting documentation, with the exception of showings of interest, challenges to showings of interest, other challenges, and objections, would be served.

Section 2422.5—This section identifies the method for filing the new petition, including where to file, the number of copies to file, and the date of filing. The petitioner would have to file an original and 2 copies of the petition, rather than the current original and 4 copies.

Section 2422.6—This is a new section that ensures service of the petition on all entities that may have an interest in a proceeding. It provides that a Regional Director will notify interested parties identified in a petition and any other interested parties known to the Regional Director. This section does not alter the petitioner's service requirements contained in section 2422.4.

Section 2422.7—Under this section, as under current regulation, a Regional Director will direct an activity or agency to post a notice for 10 days advising affected employees and interested parties about a petition. However, as discussed in more detail in connection with section 2422.8, the posting of the notice no longer will establish the time period for filing intervention requests, challenges to the showing of interest, or other challenges to the proceeding.

Section 2422.8—This section would significantly change the current requirements for requesting intervention and filing cross-petitions. Timeliness for filing requests for intervention and cross-petitions is no longer subject to the 10-day posting period. Rather, the requests and filings are timely if filed either: (1) prior to the close of a hearing; or (2) if no hearing is held, prior to the approval of an election agreement or issuance of a Decision and Order. The section expands the criteria to qualify as an intervenor to allow all parties who are affected by issues raised in the petition to participate in a proceeding. Similarly, activities and agencies may qualify as intervenors if they employ any employees affected by issues raised in a petition.

Section 2422.9—This section defines the "adequacy of a showing of interest." This term is not defined in the current regulations. The section clarifies that

Regional Director decisions holding that a showing of interest is adequate are final and binding.

Section 2422.10—This section clarifies that Regional Director decisions holding that a showing of interest is valid are final and binding decisions. Time limits for filing challenges to the validity of a showing of interest are no longer tied to the 10-day posting period. Rather, challenges are timely if filed: (1) prior to the close of a hearing; or (2) if no hearing is held, prior to the approval of an election agreement or issuance of a Decision and Order.

Section 2422.11—Time limits for filing challenges to the status of a labor organization are no longer tied to the 10-day posting period. Rather, status challenges are timely if filed: (1) prior to the close of a hearing; or (2) if no hearing is held, prior to the approval of an election agreement or issuance of a Decision and Order. The section also clearly states the current requirement that the only basis on which such a status challenge may be made is alleged non-compliance with 5 U.S.C. 7103(a)(4).

Section 2422.12—This section lists the timeliness requirements for filing a petition seeking an election. There are no substantive changes in the election bar in subsection (a), the certification bar in subsection (b) or the bar rules in subsections (d) through (f). A new subsection (c) has been added to track case law concerning the filing of a petition during the time for agency head review under 5 U.S.C. 7114(c). See *Kansas Army National Guard, Topeka, Kansas*, 47 FLRA 937 (1993); *Fort Bragg Association of Teachers and U.S. Department of the Army, Fort Bragg Schools, Fort Bragg, North Carolina*, 44 FLRA 852 (1992); *U.S. Department of Defense, Defense Contract Audit Agency, Central Region and American Federation of Government Employees, Local 3529*, 37 FLRA 1218 (1990). Also, a new subsection (h) has been added to track case law concerning the requirements that a contract must meet to serve as a bar. See *U.S. Department of the Interior, Redwood National Park, Crescent City, California*, 48 FLRA 666 (1993); *U.S. Department of Health and Human Services, Social Security Administration*, 44 FLRA 230 (1992); *Florida (Air) National Guard, St. Augustine, Florida*, 43 FLRA 1475 (1992); *U.S. Department of Housing and Urban Development, Newark Office, Newark, New Jersey*, 37 FLRA 1122 (1990); *Department of the Army, U.S. Army Concord District Recruiting Command, Concord, New Hampshire*, 14 FLRA 73 (1984). These changes place in one section all requirements

concerning a contract as a bar to a petition seeking an election.

Section 2422.13—This is a new section highlighting the importance of discussions among the parties to narrow and resolve issues raised in a representation matter and the role of personnel in the Regional Offices in assisting parties in these discussions, both before and after the filing of a petition. Subsection (a) encourages all parties to meet prior to the filing of a petition to discuss and narrow the issues. If requested by all parties, Regional Office personnel also will participate in these meetings. Subsection (b) allows a Regional Director to require all affected parties to meet to attempt to narrow and resolve issues after a petition has been filed.

Section 2422.14—This section states the consequences of a withdrawal or dismissal of a petition seeking an election less than 60 days before the expiration of a contract covering the employees affected or anytime after the expiration of the agreement. The section now applies to all contracts, not just those having a term of 3 years or less. This section makes no substantive changes in the current regulations concerning consequences of withdrawal or dismissal of a petition seeking an election less than 60 days before the expiration of a collective bargaining agreement (subsection (a)); or such consequences when a petition seeking an election is withdrawn by the petitioner less than 3 days prior to a hearing, or after a Regional Director has approved an election agreement or directed an election (subsection (b)). However, in a departure from current regulation, a new subsection (c) bars an incumbent from seeking an election in a unit for which it has disclaimed interest within the previous 6 months.

Section 2422.15—This section requires all parties to furnish information concerning issues raised in a petition and to cooperate fully in an investigation, subject to dismissal of a petition or a request to intervene.

Section 2422.16—This section discusses election agreements and elections directed by a Regional Director. The section does not change the existing requirement that parties will be provided an opportunity for a hearing on other than procedural matters before a Regional Director directs an election.

However, the section reflects a significant change: after a hearing, if there are no questions regarding unit appropriateness, a Regional Director may issue a Direction of Election without issuing a Decision and Order. Thus, elections may be conducted

without delay when the parties agree on, and a Regional Director approves, an appropriate unit even though the parties are unable to agree on such matters as the eligibility of employees that do not affect the appropriateness of the unit. Any party would be permitted to file challenges to the eligibility of any person voting in the election and/or file objections to the election.

Section 2422.17—This section, pertaining to a notice of hearing, provides that parties must participate in a prehearing conference scheduled by the Hearing Officer and must be prepared to discuss, narrow and resolve the issues raised by the petition set forth in the notice of hearing. This section, in conjunction with section 2422.13, emphasizes the resolution of issues at the earliest stage possible during a proceeding.

Sections 2422.18–2422.20—These three sections set forth hearing procedures and rights of the parties at a hearing.

Section 2422.21—This section offers two options. Option 1 follows current regulations. Option 2 would authorize a Hearing Officer to make recommendations on the record on any issue. Other options exist, including limiting the type of recommendations that may be made to certain matters, such as credibility and eligibility issues. Following receipt of comments, consideration will be given to whether, if current regulations are changed, the authority of Hearing Officers to make recommendations should be more limited than that proposed in Option 2.

Section 2422.22—This section addresses objections to the conduct of the hearing.

Section 2422.23—This section clarifies and simplifies the procedure by which elections are conducted or supervised by a Regional Director. This section continues current practices with two exceptions: subsection (e) provides that when the parties agree, the Regional Director may allow an intervenor to remove its name from the ballot even if the request to withdraw is received after the approval of an election agreement or the direction of an election; subsection (f) adds that if an incumbent withdraws from a ballot to decertify the incumbent, any intervenor will be given time, as established by a Regional Director, to proffer a thirty percent (30%) showing of interest in the unit. Subsection (g) describes whether an election will be held when the petitioner requests withdrawal.

Sections 2422.24–2422.29—These six sections discuss challenged ballots, the tally of ballots, objections to the election, the processing of determinative

challenged ballots and objections to an election, and runoff and inconclusive elections. These sections make no substantive changes in current practices in these areas, except in one instance: subsection (a) of section 2422.26 provides that objections to an election must be filed and received by a Regional Director within 5 days after the tally of ballots has been furnished to the parties. Current regulations measure the timeliness of objections from the date of service of the objections, which encompasses the date mailed. This change allows certifications following elections to be issued more expeditiously.

Section 2422.30—This section clarifies in subsection (b), consistent with section 2422.16(c), that a Regional Director will issue a notice of hearing when there is either a material issue of fact or reasonable cause to believe a question exists regarding unit appropriateness. The section also clarifies in subsection (e) what constitutes “the record” in a representation proceeding. The section makes no substantive changes in the current practices in these areas. The section states that a Regional Director will resolve matters in dispute and issue a Decision and Order when appropriate but does not list all potential actions a Regional Director may take.

Section 2422.31—Subsection (c) includes two options for when the Authority will grant an application for review of a Regional Director's decision. Option 1 retains the current grounds for review with minor editorial changes. Option 2 specifies that, in addition to satisfying one or more of those grounds, a party seeking review must assert and establish that the Authority's decision will have a substantial impact on labor-management relations law unless the Authority determines, in its discretion, that extraordinary circumstances exist to grant review. Following receipt of comments, the Authority will adopt one of the options or a combination thereof.

Section 2422.32—This is a new section that states when certifications and revocations may be issued. The section allows a Regional Director to issue, as appropriate, revocations of recognitions or certifications, when an exclusive representative no longer represents an appropriate unit, such as when a disclaimer is filed by an incumbent or when there has been a substantial change in the character and scope of a unit. The issuance of revocations will enable parties and the Authority to better track the history of a bargaining unit and provide a definitive declaration of the representational status of the unit. The

section also clarifies that a revocation of a certification has no impact on any rights and obligations that may exist under the Statute.

Section 2422.33—This section clarifies that relief which was or could have been obtained in a representation proceeding may not be obtained in an unfair labor practice proceeding.

Section 2422.34—This new substantive rule sets out the obligations and rights of parties during the pendency of a representation petition.

Subsection (a) provides that during the pendency of any representation petition, parties must maintain existing recognitions and adhere to the terms and conditions of existing collective bargaining agreements. These aspects of the section reflect existing case law requirements. *E.g., U.S. Department of the Navy, Naval Air Engineering Center, Lakehurst, New Jersey*, 3 FLRA 568 (1980); *Department of Energy*, 2 FLRA 838 (1980). Subsection (a) also provides that, during such pendency, parties must fulfill all other representational and bargaining responsibilities. In part, this aspect of subsection (a) reflects existing requirements. *See, e.g., Department of the Interior, Bureau of Reclamation, Yuma Projects Office, Yuma Arizona*, 4 FLRC 486, 497 (1976) (during pendency of a representation petition, if an agency “must make changes in otherwise negotiable personnel policies and practices and matters affecting working conditions, then the agency must notify the incumbent union or unions of those proposed changes and, upon request, negotiate on those matters * * *”). However, subsection (a) would alter existing law by permitting changes after representational and collective bargaining responsibilities under the Statute are satisfied. Additionally, subsection (a) departs from existing law insofar as it would require parties to, among other things, bargain over and execute a term agreement during the pendency of certain petitions. *E.g., Immigration and Naturalization Service*, 16 FLRA 80, 87 (1984) (agency did not violate the Statute by refusing to bargain over changes in negotiated promotion plan during pendency of a question concerning representation because such bargaining “would necessarily have led to changes in conditions of employment * * * which the [r]espondent was required to maintain to the maximum extent possible”). Subsection (b) permits parties to take actions consistent with their position regarding the unit status of individual employees, subject to challenge and review. For example, an agency may refuse to process, under a negotiated grievance procedure, a

grievance filed by an employee who it claims is outside a recognized bargaining unit. This refusal to process is subject to challenge by the exclusive representative of the relevant unit. Subsection (b) is consistent with existing case law requirements, which recognize that, in situations such as these, a party acts at its peril in taking actions based on its position regarding an employee's unit status.

List of Subjects in 5 CFR Parts 2421 and 2422

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set forth in the preamble, the Federal Labor Relations Authority proposes to amend Part 2421 and revise Part 2422 of its regulations as follows:

PART 2421—MEANING OF TERMS AS USED IN THIS SUBCHAPTER

1. The authority citation for Part 2421 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. Section 2421.11 is revised to read as follows:

§ 2421.11 Party.

Party means:

(a) Any labor organization, employing agency or activity or individual
(1) Filing a charge, petition, or request;

(2) Named as

(i) A charged party in a charge,
(ii) A respondent in a complaint, or
(iii) An employing agency or activity or an incumbent labor organization in a petition;

(3) Whose intervention in a proceeding has been permitted or directed by the Authority; or

(4) Who participated as a party
(i) In a matter that was decided by an agency head under 5 U.S.C. 7117, or
(ii) In a matter where the award of an arbitrator was issued; and

(b) The General Counsel, or the General Counsel's designated representative, in appropriate proceedings.

3. Sections 2421.18 through 2421.22 are added to read as follows:

§ 2421.18 Petitioner.

Petitioner means the party filing a petition under Part 2422 of this Subchapter.

§ 2421.19 Eligibility period.

Eligibility period means the payroll period during which an employee must be in an employment status with an activity or agency in order to be eligible

to vote in a representation election under Part 2422 of this Subchapter.

§ 2421.20 Election agreement.

Election agreement means an agreement under Part 2422 of this Subchapter signed by all the parties, and approved by the Regional Director, concerning the details and procedures of a representation election in an appropriate unit.

§ 2421.21 Affected by issues raised.

The phrase *affected by issues raised*, as used in Part 2422, should be construed broadly to include parties and other labor organizations, agencies or activities, or bargaining units that have a connection to questions presented in a proceeding.

§ 2421.22 Determinative challenged ballots.

Determinative challenged ballots are challenges that are unresolved prior to the tally and sufficient in number after the tally to affect the results of the election.

4. Part 2422 is revised to read as follows:

PART 2422—REPRESENTATION PROCEEDINGS

Sec.

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2422.28 Runoff elections.

2422.29 Inconclusive elections.

2422.30 Regional Director investigations, notices of hearings, actions and Decisions and Orders.

2422.31 Application for review of a Regional Director Decision and Order.

2422.32 Certifications and Revocations.

2422.33 Relief obtainable under Part 2423.

2422.34 Rights and obligations during the pendency of representation proceedings.

Authority: 5 U.S.C. 7134.

§ 2422.1 Purposes of a petition.

A petition may be filed for the following purposes:

(a) *Elections or Eligibility for dues allotment*. To request:

(1) (i) An election to determine if employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, and/or

(ii) A determination of eligibility for dues allotment in an appropriate unit without an exclusive representative; or

(2) an election to determine if employees in a unit no longer wish to be represented for the purpose of collective bargaining by an exclusive representative. Petitions under this subsection must be accompanied by an appropriate showing of interest.

(b) *Clarification or Amendment*. To clarify, and/or amend:

(1) A recognition or certification then in effect; and/or

(2) Any other matter relating to representation.

(c) *Consolidation*. To consolidate two or more units, with or without an election, in an agency and for which a labor organization is the exclusive representative.

§ 2422.2 Who may file a petition.

A representation petition may be filed by: an individual; a labor organization; two or more labor organizations acting as a joint-petitioner; an individual acting on behalf of any employee(s); an activity or an agency; or a combination of the above. Provided, that petitions requiring by a showing of interest may be filed only by an individual or a labor organization.

§ 2422.3 Contents of a petition.

(a) *What to file*. A petition must be filed on a form prescribed by the Authority and contain the following information:

(1) The name and mailing address for each activity or agency affected by issues raised in the petition, including street number, city, state and zip code.

(2) The name, mailing address and work telephone number of the contact person for each activity or agency affected by issues raised in the petition.

(3) The name and mailing address for each labor organization affected by issues raised in the petition, including street number, city, state and zip code. If a labor organization is affiliated with

a national organization, the local designation and the national affiliation should both be included. If a labor organization is an exclusive representative of any of the employees affected by issues raised in the petition, the date of the recognition or certification and the date any collective bargaining agreement covering the unit will expire or when the most recent agreement did expire should be included, if known.

(4) The name, mailing address and work telephone number of the contact person for each labor organization affected by issues raised in the petition.

(5) The name and mailing address for the petitioner, including street number, city, state and zip code. If a labor organization petitioner is affiliated with a national organization, the local designation and the national affiliation should both be included.

(6) A description of the unit(s) affected by issues raised in the petition. The description should generally indicate the geographic locations and the classifications of the employees included (or sought to be included) in, and excluded (or sought to be excluded) from, the unit.

(7) The approximate number of employees in the unit(s) affected by issues raised in the petition.

(8) A clear and concise statement of the issues raised by the petition and the results the petitioner seeks.

(9) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that the contents of the petition are true and correct to the best of the person's knowledge and belief.

(10) The signature, title, mailing address and telephone number of the person filing the petition.

(b) *Compliance with 5 U.S.C. 7111(e).* A labor organization/petitioner complies with 5 U.S.C. 7111(e) by submitting to the agency or activity and to the Department of Labor a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives. By signing the petition form, the labor organization/petitioner certifies that it has submitted these documents to the activity or agency and to the Department of Labor.

(c) *Showing of interest supporting a representation petition.* When filing a petition requiring a showing of interest, the petitioner must:

- (1) So indicate on the petition form;
- (2) Submit with the petition a showing of interest of not less than thirty percent (30%) of the employees in the unit involved in the petition; and

(3) Include an alphabetical list of the names constituting the showing of interest.

(d) *Petition seeking dues allotment.* When there is no exclusive representative, a petition seeking certification for dues allotment shall be accompanied by a showing of membership in the petitioner of not less than ten percent (10%) of the employees in the unit claimed to be appropriate. An alphabetical list of names constituting the showing of membership must be submitted.

§ 2422.4 Service requirements.

Option 1

Unless otherwise specifically provided, every petition, motion, brief, request, challenge, written objection, or application for review shall be served on all parties affected by issues raised in the filing. The service shall include all documentation in support thereof, with the exception of a showing of interest. The filer must submit a written statement of service to the Regional Director.

Option 2

Unless otherwise specifically provided, every petition, motion, brief, request, challenge, written objection, or application for review shall be served on all parties affected by issues raised in the filing. The service shall include all documentation in support thereof, with the exception of a showing of interest, challenges to a showing of interest, and documentation supporting challenges and objections. The filer must submit a written statement of service to the Regional Director.

§ 2422.5 Filing petitions.

(a) *Where to file.* Petitions must be filed with the Regional Director for the region in which the unit or employee(s) affected by issues raised in the petition are located. If the unit(s) or employees are located in two or more regions of the Authority, the petitions must be filed with the Regional Director for the region in which the headquarters of the agency or activity is located.

(b) *Number of copies.* An original and two (2) copies of the petition and the accompanying material must be filed with the Regional Director.

(c) *Date of filing.* A petition is filed when it is received by the appropriate Regional Director.

§ 2422.6 Notification of filing.

(a) *Notification to interested parties.* After a petition is filed, the Regional Director will notify any labor organization, agency or activity the parties have indicated as being affected

by issues raised by the petition, or any other interested party known to the Regional Director, that a petition has been filed with the Regional Director.

(b) *Contents of the notification.* The notification will inform the labor organization, agency or activity of:

- (1) The name of the petitioner;
- (2) The description of the unit or employees affected by issues raised in the petition; and,
- (3) A statement that all affected parties should advise the Regional Director in writing of their interest in the issues raised in the petition.

§ 2422.7 Posting notice of filing of a petition.

(a) *Posting notice of petition.* When appropriate, the Regional Director, after the filing of a representation petition, will direct the agency or activity to post copies of a notice to all employees in places where notices are normally posted for the employees affected by issues raised in the petition and/or in a manner by which notices are normally distributed.

(b) *Contents of notice.* The notice shall advise affected employees and interested parties about the petition.

(c) *Duration of notice.* The notice should be conspicuously posted for a period of ten (10) days and not be altered, defaced, or covered by other material.

§ 2422.8 Intervention and cross-petitions.

(a) *Cross-petitions.* A cross-petition is a petition seeking an election in a unit which includes any employees in a unit covered by a pending representation petition. Cross-petitions must be filed in accordance with this subpart.

(b) *Intervention requests and cross-petitions.* A request to intervene and a cross-petition, accompanied by any necessary showing of interest, must be submitted in writing and/or filed and submitted to the Regional Director prior to a hearing, or to the Hearing Officer after the hearing opens but before it closes. If no hearing is held, a request to intervene and a cross-petition must be filed prior to action being taken pursuant to § 2422.30.

(c) *Labor organization intervention requests.* Except for incumbent intervenors, a labor organization seeking to intervene shall submit a statement that it has complied with 5 U.S.C. 7111(e) and one of the following:

- (1) A showing of interest of ten percent (10%) or more of the employees in the unit covered by a petition seeking an election, with an alphabetical list of the names of the employees constituting the showing of interest; or
- (2) A current or recently expired collective bargaining agreement

covering any of the employees in the unit affected by issues raised in the petition; or

(3) Evidence that it is or was, prior to a reorganization, the recognized or certified exclusive representative of any of the employees affected by issues raised in the petition.

(d) *Incumbent intervention.* An incumbent exclusive representative, without regard to the requirements of paragraph (c) of this section, will be considered an intervenor in any representation proceeding raising issues that affect employees the incumbent represents, unless it serves the Regional Director with a written disclaimer of any representation interest in the claimed unit.

(e) *Agency or activity intervention.* An agency or activity seeking to intervene in any representation proceeding must submit evidence that one or more employees of the agency or activity may be affected by issues raised in the petition.

§ 2422.9 Adequacy of showing of interest.

(a) *Adequacy.* Adequacy of a showing of interest refers to the percentage of employees in the unit involved as required by §§ 2422.3 (c) and (d) and 2422.8(c)(1).

(b) *Regional Director investigation and Decision and Order.* The Regional Director will conduct such investigation as deemed appropriate. A Regional Director's determination that the showing of interest is adequate is final and binding and not subject to collateral attack at a representation hearing or on appeal to the Authority. If the Regional Director determines that a showing of interest is inadequate, the Regional Director will issue a Decision and Order dismissing the petition, or denying a request for intervention.

§ 2422.10 Validity of showing of interest.

(a) *Validity.* Validity questions are raised by challenges to a showing of interest on grounds other than adequacy.

(b) *Validity challenge.* The Regional Director or any party may challenge the validity of a showing of interest.

(c) *When and where validity challenges may be filed.* Party challenges to the validity of a showing of interest must be in writing and submitted to the Regional Director prior to a hearing, or to the Hearing Officer after the hearing opens but before it closes. If no hearing is held, challenges to the validity of a showing of interest must be filed prior to action being taken pursuant to § 2422.30.

(d) *Contents of validity challenges.* Challenges to the validity of a showing

of interest must be supported with evidence.

(e) *Regional Director investigation and Decision and Order.* The Regional Director will conduct such investigation as deemed appropriate. The Regional Director's determination that a showing of interest is valid is final and binding and is not subject to collateral attack or appeal to the Authority. If the Regional Director finds that the showing of interest is not valid, the Regional Director will issue a Decision and Order dismissing the petition or denying the request to intervene.

§ 2422.11 Challenge to the status of a labor organization.

(a) *Basis of challenge to labor organization status.* The only basis on which a challenge to the status of a labor organization may be made is compliance with 5 U.S.C. 7103(a)(4).

(b) *Format and time for filing a challenge.* Any party filing a challenge to the status of a labor organization involved in the processing of a petition must do so in writing to the Regional Director prior to a hearing, or to the Hearing Officer after the hearing opens but before it closes. If no hearing is held, challenges must be filed prior to action being taken pursuant to § 2422.30.

§ 2422.12 Timeliness of petitions seeking an election.

(a) *Election bar.* Where there is no certified exclusive representative, a petition seeking an election will not be considered timely if filed within twelve (12) months of a valid election involving the same unit or a subdivision of the same unit.

(b) *Certification bar.* Where there is a certified exclusive representative of employees, a petition seeking an election will not be considered timely if filed within twelve (12) months after the certification of the exclusive representative of the employees in an appropriate unit. If a collective bargaining agreement is signed and dated covering the claimed unit, paragraphs (c), (d), and (e) of this section apply.

(c) *Bar during 5 U.S.C. 7114(c) agency head review.* A petition seeking an election will not be considered timely if filed during the period of agency head review under 5 U.S.C. 7114(c). This bar expires upon either the passage of thirty (30) days absent agency head action, or upon the date of any timely agency head action.

(d) *Contract bar where the contract is for three (3) years or less.* Where a collective bargaining agreement has been signed and dated covering the claimed unit and has a term of three (3)

years or less from the date it became effective, a petition seeking an election will be considered timely if filed not more than one hundred and five (105) and not less than sixty (60) days prior to the expiration of the agreement.

(e) *Contract bar where the contract is for three (3) years or more.* Where a collective bargaining agreement has been signed and dated covering the claimed unit and has a term of three (3) years or more from the date it became effective, a petition seeking an election will be considered timely if filed not more than one hundred and five (105) days prior to the expiration of the initial three (3) year period, and any time after the expiration of the initial three (3) year period.

(f) *Unusual circumstances.* A petition seeking an election or a determination relating to representation matters may be filed at any time when unusual circumstances exist that substantially affect the unit or majority representation.

(g) *Premature extension.* Where a collective bargaining agreement with a term of three (3) years or less has been extended and signed more than sixty (60) days before its expiration date, the extension will not serve as a basis for dismissal of a petition seeking an election filed in accordance with this section.

(h) *Contract requirements.* Collective bargaining agreements, including agreements that go into effect under 5 U.S.C. 7114(c) and those that automatically renew without further action by the parties, do not constitute a bar to a petition seeking an election under this section unless a clear and unambiguous effective date, renewal date where applicable, duration, and termination date are ascertainable from the agreement and relevant accompanying documentation.

§ 2422.13 Resolution of issues raised by a petition.

(a) *Meetings prior to filing a representation petition.* All parties affected by the representation issues that may be raised in a petition are encouraged to meet prior to the filing of the petition to discuss their interests and narrow and resolve the issues. If requested by all parties a representative of the appropriate Regional Office will participate in these meetings.

(b) *Meetings to narrow and resolve the issues after the petition is filed.* After a petition is filed, the Regional Director may require all affected parties to meet to narrow and resolve the issues raised in the petition.

§ 2422.14 Effect of withdrawal/dismissal.

(a) *Withdrawal/dismissal less than sixty (60) days before contract expiration.* When a petition seeking an election that has been timely filed is withdrawn by the petitioner or dismissed by the Regional Director less than sixty (60) days prior to the expiration of an existing agreement between the incumbent exclusive representative and the activity or any time after the expiration of the agreement, another petition seeking an election will not be considered timely if filed within a ninety (90) day period from either:

- (1) The date the withdrawal is approved; or
- (2) The date the petition is dismissed by the Regional Director when no application for review is filed with the Authority; or
- (3) The date the Authority rules on an application for review. Other pending petitions that have been timely filed under this Part will continue to be processed.

(b) *Withdrawal less than three (3) days prior to a hearing or after approval of an election agreement.* A petitioner who submits a withdrawal request for a petition seeking an election that is received by the Regional Director will be barred from filing another petition seeking an election for the same unit or any subdivision of the unit for six (6) months from the date of the approval of the withdrawal by the Regional Director if such request is filed:

- (1) Within three (3) days before a hearing is scheduled to be held; or
- (2) After the approval by the Regional Director of an election agreement or direction of an election by the Regional Director under § 2422.16.

(c) *Withdrawal of incumbent prior to an election.* When an election is not held because the incumbent disclaims any representation interest in a unit, a petition by the incumbent seeking an election involving the same unit or a subdivision of the same unit will not be considered timely if filed within six (6) months of cancellation of the election.

§ 2422.15 Duty to furnish information.

(a) *Relevant information.* After a petition is filed, all parties must, upon request of the Regional Director, furnish the Regional Director and serve all parties affected by issues raised in the petition with information concerning parties, issues, and agreements raised in or affected by the petition.

(b) *Inclusions and exclusions.* After a petition seeking an election is filed, the Regional Director may direct the agency or activity to furnish the Regional Director and all parties affected by

issues raised in the petition with a current alphabetized list of employees and job classifications included in and/or excluded from the existing or claimed unit affected by issues raised in the petition.

(c) *Cooperation.* The failure to submit supporting information or to cooperate fully in the investigation of the petition or request to intervene may result in dismissal.

§ 2422.16 Election agreements or directed elections.

(a) *Election agreements.* Parties are encouraged to enter into election agreements.

(b) *Regional Director directed election.* If the parties are unable to agree on procedural matters, specifically, the eligibility period, dates, hours, or locations of the election, the Regional Director will decide election procedures and issue a Direction of an Election, without prejudice to the rights of a party to file objections to the procedural conduct of the election.

(c) *Opportunity for a hearing.* Before directing an election, the Regional Director shall provide affected parties an opportunity for a hearing on other than procedural matters and, thereafter may:

- (1) Issue a Decision and Order; or
- (2) If there are no questions regarding the unit appropriateness, issue a Direction of Election without a Decision and Order.

(d) *Challenges or objections to a directed election.* A Direction of Election issued under this section will be issued without prejudice to the right of a party to file a challenge to the eligibility of any person participating in the election and/or objections to the election.

§ 2422.17 Notice of hearing.

(a) *Purpose of notice of a hearing.* The Regional Director may issue a notice of hearing involving any issues raised in the petition.

(b) *Contents.* The notice of hearing will be served on all interested parties and will advise affected employees and interested parties about the hearing.

(c) *Prehearing conference.* The Hearing Officer will schedule a prehearing conference, either by meeting or teleconference. All parties must participate in a prehearing conference and be prepared to fully discuss, narrow and resolve the issues set forth in the notice of hearing.

(d) *No appeal of hearing determination.* A Regional Director's determination to issue a notice of hearing is not appealable to the Authority.

§ 2422.18 Hearing procedures.

(a) *Purpose of a hearing.*

Representation hearings are considered investigatory and not adversarial. The purpose of the hearing is to develop a full and complete record of relevant and material facts.

(b) *Conduct of hearing.* Hearings will be open to the public unless otherwise ordered by the Hearing Officer. There is no burden of proof, with the exception of proceedings on objections to elections as provided for in § 2422.27(b). Formal rules of evidence do not apply.

(c) *Hearing officer.* Hearings will be conducted by a Hearing Officer appointed by the Regional Director. Another Hearing Officer may be substituted for the presiding Hearing Officer at any time.

(d) *Transcript.* An official reporter will make the official transcript of the hearing. Copies of the official transcript may be examined in the appropriate Regional Office during normal working hours. Requests by parties to purchase copies of the official transcript should be made to the official hearing reporter.

§ 2422.19 Motions.

(a) *Purpose of a motion.* Subsequent to the issuance of a Notice of Hearing in a representation proceeding, a party seeking a ruling, an order, or relief must do so by filing or raising a motion stating the order or relief sought and the grounds therefor. Challenges and other filings referenced in other sections of this subpart may, in the discretion of the Regional Director or Hearing Officer, be treated as a motion.

(b) *Prehearing motions.* Prehearing motions must be filed in writing with the Regional Director. Any response must be filed with the Regional Director within five (5) days after service of the motion. The Regional Director may rule on the motion or refer the motion to the Hearing Officer.

(c) *Motions made at the hearing.* (1) During the hearing, motions will be made to the Hearing Officer and may be oral on the record, unless otherwise required in this subpart to be in writing. Responses may be oral on the record or in writing, but, absent permission of the Hearing Officer, must be provided before the hearing closes. When appropriate, the Hearing Officer will rule on motions made at the hearing or referred to the Hearing Officer by the Regional Director.

(2) When a motion to intervene pursuant to § 2422.8 is made at the hearing, the Hearing Officer will either grant the motion, deny the motion, or conditionally allow participation in the hearing pending the Regional Director's ruling on the motion.

(d) *Posthearing motions.* Motions made after the hearing closes must be filed in writing with the Regional Director. Any response to a posthearing motion must be filed with the Regional Director within five (5) days after service of the motion.

§ 2422.20 Rights of parties at a hearing.

(a) *Rights.* A party at a hearing will have the right:

- (1) To appear in person or by a representative;
- (2) To examine and cross-examine witnesses; and
- (3) To introduce into the record relevant evidence.

(b) *Documentary evidence and stipulations.* Parties must submit two (2) copies of documentary evidence to the Hearing Officer and a copy to all other parties. Stipulations of fact between the parties may be introduced into evidence.

(c) *Oral argument.* Parties will be entitled to a reasonable period prior to the close of the hearing for oral argument. Presentation of a closing oral argument does not preclude a party from filing a brief under paragraph (d) of this section.

(d) *Briefs.* A party will be afforded an opportunity to file a brief with the Regional Director.

(1) An original and two (2) copies of a brief must be filed with the Regional Director within thirty (30) days from the close of the hearing.

(2) A written request for an extension of time to file a brief must be filed with and received by the Regional Director no later than five (5) days before the date the brief is due.

(3) No reply brief may be filed without permission of the Regional Director.

§ 2422.21 Duties and powers of the Hearing Officer.

Option 1

(a) *Duty of the Hearing Officer.* The Hearing Officer will receive evidence and inquire fully into the relevant and material facts concerning the matters that are the subject of the hearing.

Option 2

(a) *Duty of the Hearing Officer.* The Hearing Officer will receive evidence, inquire fully into the relevant and material facts concerning the matters that are the subject of the hearing, and may make recommendations on the record to the Regional Director.

(b) *Powers of the Hearing Officer.* During the period a case is assigned to a Hearing Officer by the Regional Director and prior to the close of the hearing, the Hearing Officer may take

any action necessary to schedule, conduct, continue, control, and regulate the hearing, including ruling on motions when appropriate.

§ 2422.22 Objections to the conduct of the hearing.

(a) *Objections.* Objections are oral or written complaints concerning the conduct of a hearing.

(b) *Exceptions to rulings.* There are automatic exceptions to all adverse rulings.

§ 2422.23 Election procedures.

(a) *Regional Director conducts or supervises election.* The election will either be conducted or supervised by the Regional Director.

(b) *Notice of election.* Prior to the election a notice of election, prepared by the Regional Director, will be posted by the activity in places where notices to employees are customarily posted and/or in a manner by which notices are normally distributed. The notice of election will contain the details and procedures of the election, including the appropriate unit, the eligibility period, the date(s), hour(s) and location(s) of the election, a sample ballot, and the effect of the vote.

(c) *Sample ballot.* The reproduction of any document purporting to be a copy of the official ballot that suggests either directly or indirectly to employees that the Authority endorses a particular choice in the election may constitute grounds for setting aside an election if objections are filed under § 2422.26.

(d) *Secret ballot.* All elections will be by secret ballot.

(e) *Intervenor withdrawal from ballot.* When two or more labor organizations are included as choices in an election, an intervening labor organization may, prior to the approval of an election agreement or before the direction of an election procedures, file a written request with the Regional Director to remove its name from the ballot. If the request is not received prior to the approval of an election agreement or before the direction of an election, unless the parties and the Regional Director agree otherwise, the intervening labor organization will remain on the ballot. The Regional Director's decision on the request is final and not subject to the filing of an application for review to the Authority.

(f) *Incumbent withdrawal from ballot in an election to decertify an incumbent representative.* When there is no intervening labor organization, an election to decertify an incumbent exclusive representative will not be held if the incumbent provides the Regional Director with a written disclaimer of

any representation interest in the unit. When there is an intervenor, an election will be held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Regional Director.

(g) *Petitioner withdraws from ballot in an election.* When there is no intervening labor organization, an election will not be held if the petitioner provides the Regional Director with a written request to withdraw the petition. When there is an intervenor, an election will be held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Regional Director.

(h) *Observers.* All parties are entitled to representation at the polling location(s) by observers of their own selection subject to the Regional Director's approval.

(1) Parties desiring to name observers must file in writing with the Regional Director a request for specifically named observers at least fifteen (15) days prior to an election. The Regional Director may grant an extension of time for filing a request for specifically named observers for good cause where a party requests such an extension or on the Regional Director's own motion. The request must name and identify the observers requested.

(2) An agency or activity may not use as its observer:

- (i) Supervisory or managerial personnel;
 - (ii) Employees eligible to vote in the election;
 - (iii) Employees who have any official connection with any of the labor organizations involved; or
 - (iv) Non-employees of the Federal government.
- (3) A labor organization may not use as its observer:
- (i) Supervisory or managerial personnel;
 - (ii) Non-employees of the Federal government; or
 - (iii) Employees on leave without pay status who are working for the labor organization involved.

(4) Objections to a request for specific observers must be filed with the Regional Director stating the reasons in support within five (5) days after service of the request.

(5) The Regional Director's ruling on requests for and objections to observers is final and binding and is not subject to the filing of an application for review with the Authority.

§ 2422.24 Challenged ballots.

(a) *Filing challenges.* A party or the Regional Director may, for good cause,

challenge the eligibility of any person to participate in the election prior to the employee voting.

(b) *Challenged ballot procedure.* An individual whose eligibility to vote is in dispute will be given the opportunity to vote a challenged ballot. If the parties and the Region are unable to resolve the challenged ballot(s) prior to the tally of ballots, the unresolved challenged ballots will be impounded and preserved until a determination can be made, if necessary, by the Regional Director.

§ 2422.25 Tally of ballots.

(a) *Tallying the ballots.* When the election is concluded, the Regional Director will tally the ballots.

(b) *Service of the tally.* When the tally is completed, the Regional Director will serve the tally of ballots to the parties in accordance with the election agreement or direction of election.

(c) *Valid ballots cast.* Representation will be determined by the majority of the valid ballots cast.

§ 2422.26 Objections to the election.

(a) *Filing objections to the election.* Objections to the procedural conduct of the election or to conduct that may have improperly affected the results of the election must be submitted to the Regional Director. Objections must be filed and received by the Regional Director within five (5) days after the tally of ballots has been furnished. Any objections must be timely regardless of whether the challenged ballots are sufficient in number to affect the results of the election. The objections must be supported by clear and concise reasons. An original and two (2) copies of the objections must be received by the Regional Director.

(b) *Supporting evidence.* The objecting party must file with the Regional Director evidence, including signed statements, documents and other materials supporting the objections within ten (10) days after the objections are filed.

§ 2422.27 Determinative challenged ballots and objections.

(a) *Investigation.* The Regional Director will investigate objections and/or determinative challenged ballots that are sufficient in number to affect the results of the election.

(b) *Burden of proof.* A party filing objections to the election bears the burden of proof by a preponderance of the evidence concerning those objections. However, no party bears the burden of proof on challenged ballots.

(c) *Consolidated hearing on objections and/or determinative challenged ballots*

and an unfair labor practice hearing.

When appropriate, and in accordance with § 2422.33, objections and/or determinative challenged ballots may be consolidated with an unfair labor practice hearing. Such consolidated hearings will be conducted by an Administrative Law Judge. Exceptions and related submissions must be filed with the Authority and the Authority will issue a decision in accordance with Part 2423 of this chapter, except for the following:

(1) Sections 2423.18 and 2423.19(j) of this Subchapter concerning the burden of proof and settlement conferences are not applicable;

(2) The Administrative Law Judge may not recommend remedial action to be taken or notices to be posted as provided by § 2423.26(a) of this Subchapter; and,

(3) References to "charge" and "complaint" in § 2423.26(b) of this chapter will be omitted.

(d) *Regional Director Action.* After investigation, the Regional Director will take appropriate action consistent with § 2422.30.

§ 2422.28 Runoff elections.

(a) *When a runoff may be held.* A runoff election is required in an election involving at least three (3) choices, one of which is "no union" or "neither," when no choice receives a majority of the valid ballots cast. However, a runoff may not be held until the Regional Director has ruled on objections to the election and determinative challenged ballots.

(b) *Eligibility.* Employees who were eligible to vote in the original election and who are also eligible on the date of the runoff election may vote in the runoff election.

(c) *Ballot.* The ballot in the runoff election will provide for a selection between the two choices receiving the largest and second largest number of votes in the election.

§ 2422.29 Inconclusive elections.

(a) *What is an inconclusive election.* An inconclusive election is one where challenged ballots are not sufficient to affect the outcome of the election and one of the following occurs:

(1) The ballot provides for at least three (3) choices, one of which is "no union" or "neither" and the votes are equally divided; or

(2) The ballot provides for at least three (3) choices, the choice receiving the highest number of votes does not receive a majority, and at least two other choices receive the next highest and same number of votes; or

(3) When a runoff ballot provides for a choice between two labor

organizations and results in the votes being equally divided; or

(4) When the Regional Director determines that there have been significant procedural irregularities.

(b) *Eligibility to vote in a rerun election.* A current payroll period will be used to determine eligibility to vote in a rerun election.

(c) *Ballot.* If the Regional Director determines that the election is inconclusive, the election will be rerun with all the choices that appeared on the original ballot.

(d) *Number of reruns.* There will be only one rerun of an inconclusive election. If the rerun results in another inconclusive election, the tally of ballots will indicate a majority of valid ballots has not been cast for any choice and a certification of results will be issued. If necessary, a runoff may be held when an original election is rerun.

§ 2422.30 Regional Director investigations, notices of hearings, actions, and Decisions and Orders.

(a) *Regional Director investigation.* The Regional Director will make such investigation of the petition and any other matter as the Regional Director deems necessary.

(b) *Regional Director notice of hearing.* The Regional Director will issue a notice of hearing to inquire into any matter about which a material issue of fact exists, and any time there is reasonable cause to believe a question exists regarding unit appropriateness.

(c) *Regional Director action and Decision and Order.* After investigation and/or hearing, when a hearing has been ordered, the Regional Director will resolve the matter in dispute and, when appropriate, issue a Decision and Order.

(d) *Appeal of Regional Director Decision and Order.* A party may file with the Authority an application for review of a Regional Director Decision and Order.

(e) *Contents of the Record.* When no hearing has been conducted all material submitted to and considered by the Regional Director during the investigation becomes a part of the record. When a hearing has been conducted, the transcript and all material entered into evidence, including any posthearing briefs, become a part of the record.

§ 2422.31 Application for review of a Regional Director Decision and Order.

(a) *Filing an application for review.* A party must file an application for review with the Authority within sixty (60) days of the Regional Director's Decision and Order. The sixty (60) day time limit provided for in 5 U.S.C. 7105(f) may not be extended or waived.

(b) *Contents.* An application for review must be sufficient to enable the Authority to rule on the application without recourse to the record. An application must specify the matters and rulings to which exception(s) is taken, include a summary of evidence relating to any issue raised in the application, and make specific reference to page citations in the transcript if a hearing was held. An application may not raise any issue or rely on any facts not timely presented to the Hearing Officer or Regional Director.

Option 1

(c) *Review.* The Authority may grant an application for review only where it appears that compelling reasons exist therefor. Accordingly, an application for review may be granted only upon one or more of the following grounds:

(1) The decision raises an issue for which there is an absence of precedent or the decision is based upon a clear error in application of law or policy;

(2) The decision is based on law or policy which clearly warrants reconsideration;

(3) The conduct of a hearing or a procedural ruling has resulted in prejudicial error;

(4) The Regional Director's decision regarding a substantial factual issue was clearly erroneous and prejudicially affected the rights of a party;

Option 2

(c) *Review.* (1) Assertions required for review. The Authority will grant an application for review when a party filing has specifically asserted and established that:

(i) Review of the decision is warranted on one or more of the grounds set forth in paragraph (c)(2) of this section and,

(ii) The Authority's decision will have a substantial impact on labor-management relations law, as set forth in paragraph (c)(3) of this section.

(2) Grounds warranting review. A filing party must assert and establish that review of a Regional Director's decision is warranted on one or more of the following grounds:

(i) The decision raises an issue for which there is an absence of precedence or the decision is based upon a clear error in application of law or policy;

(ii) The decision is based on law or policy which clearly warrants reconsideration;

(iii) The conduct of a hearing or a procedural ruling has resulted in prejudicial error;

(iv) The Regional Director's decision regarding a substantial factual issue was clearly erroneous and prejudicially affected the rights of a party;

(3) Substantial impact on labor-management relations law. In addition to the requirements set forth in subsection (d), a filing party must assert and establish that the Authority's decision will have a substantial impact on labor-management relations law. Such impact may be found, but is not limited to, situations where:

(i) The Regional Director's Decision is likely to have a substantial impact in cases other than the one(s) directly involved in the decision; or

(ii) Review would resolve a question of particular importance to the Federal sector labor-management relations program.

(4) Discretionary determination of Authority to review. Notwithstanding paragraphs (c), (d), and (e) of this section, an application for review may be granted when, in the Authority's discretion, extraordinary circumstances exist for reviewing the Regional Director's Decision and Order.

(d) *Opposition.* A party may file with the Authority an opposition to an application for review within ten (10) days after the party is served with the application. A copy must be served on the Regional Director and all other parties and a statement of service must be filed with the Authority.

(e) *Regional Director Decision and Order becomes the Authority's action.* A Decision and Order of a Regional Director becomes the action of the Authority when:

(1) No application for review is filed with the Authority within sixty (60) days after the date of the Regional Director's Decision and Order; or

(2) A timely application for review is filed with the Authority and the Authority does not undertake to grant review of the Regional Director's Decision and Order within sixty (60) days of the filing of the application; or

(3) The Authority denies an application for review of the Regional Director's Decision and Order.

(f) *Authority grant of review and stay.* The Authority may rule on the issue(s) in an application for review in its order granting the application for review. Neither filing nor granting an application for review does not stay any action ordered by the Regional Director unless specifically ordered by the Authority.

(g) *Briefs if review is granted.* If the Authority does not rule on the issue(s) in the application for review in its order granting review, the Authority may, in its discretion, afford the parties an opportunity to file briefs. The briefs will be limited to the issue(s) referenced in the Authority's order granting review.

§ 2422.32 Certifications and revocations.

(a) *Certifications.* The Regional Director will issue an appropriate certification when:

(1) After an election, runoff, or rerun,
(i) No objections are filed or challenged ballots are not determinative, or

(ii) Objections and determinative challenged ballots are decided and resolved; or

(2) The Regional Director issues a Decision and Order requiring a certification and the Decision and Order becomes the action of the Authority under § 2422.31(h) or the Authority otherwise directs the issuance of a certification.

(c) *Revocations.* Without prejudice to any rights and obligations which may exist under the Statute, the Regional Director will revoke a recognition or certification, as appropriate, and provide a written statement of reasons when:

(1) An incumbent exclusive representative files, during a representation proceeding, a disclaimer of any representational interest in the unit; or

(2) Due to a substantial change in the character and scope of the unit, the unit is no longer appropriate and an election is not warranted.

§ 2422.33 Relief obtainable under Part 2423.

Remedial relief that was or could have been obtained as a result of a motion, objection, or challenge filed or raised under this subpart, may not be the basis for similar relief if filed or raised as an unfair labor practice under Part 2423 of this Chapter, *Provided*, that related matters may be consolidated for hearing as noted in § 2422.27(c) of this subpart.

§ 2422.34 Rights and obligations during the pendency of representation proceedings.

(a) *Existing recognitions, agreements, and obligations under the Statute.*

During the pendency of any representation proceeding, parties are obligated to maintain existing recognitions, adhere to the terms and conditions of existing collective bargaining agreements, and fulfill all other representational and bargaining responsibilities under the Statute.

(b) *Unit status of individual employees.* Notwithstanding paragraph (a) of this section and except as otherwise prohibited by law, a party may take action based on its position regarding the bargaining unit status of individual employees, *Provided*, that its actions may be challenged, reviewed, and remedied where appropriate.

Dated: August 1, 1995.

Solly Thomas,

Executive Director, Federal Labor Relations Authority.

[FR Doc. 95-19214 Filed 8-3-95; 8:45 am]

BILLING CODE 6267-01-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 95-046-1]

Importation of Fruits and Vegetables; Phytosanitary Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is soliciting public comment on a change we are considering making to the fruits and vegetables import regulations. We are considering requiring a phytosanitary certificate to accompany all shipments of imported produce, both commercial shipments and produce brought into the United States by individual travelers. We believe this change would substantially increase our ability to exclude dangerous plant pests associated with produce from the United States, but it would also require substantial changes in the practices of travelers and importers who bring produce into the United States.

DATES: Consideration will be given only to comments received on or before October 3, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95-046-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 95-046-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Levy or Mr. Frank E. Cooper, Senior Operations Officers, Port Operations, PPQ, APHIS, Suite 4A03, 4700 River Road Unit 139, Riverdale, MD 20737-1236; (301) 734-8645.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) authorize the Animal and Plant Health Inspection Service (APHIS) to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant products, including fruits and vegetables, to prevent the introduction of plant pests into the United States. "Subpart—Fruits and Vegetables" (7 CFR 319.56 *et seq.*) contains restrictions on the importation into the United States of fruits, vegetables, and plants or portions of plants used as packing material in connection with shipments of fruits and vegetables.

A phytosanitary certificate is a document issued by a plant protection official of a national government that is issued to facilitate the international movement of a plant or plant product article. A phytosanitary certificate certifies that the article has been thoroughly inspected, is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests, and is otherwise believed to be eligible for importation into the country of destination pursuant to the current phytosanitary laws and regulations of that country. A phytosanitary certificate may also contain additional declarations regarding the area of origin, conditions of growth, or treatment of the article, when such information is relevant to the eligibility of the article for importation. The form and use of phytosanitary certificates is governed by the International Plant Protection Convention.

Phytosanitary certificates are in wide use in international trade. APHIS issues thousands of phytosanitary certificates each year to facilitate export of United States agricultural products to countries that require phytosanitary certificates to accompany such products. We also require many agricultural products imported into the United States to be accompanied by phytosanitary certificates.

For example, phytosanitary certificates are required for restricted articles under 7 CFR 319.37 *et seq.*, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," and under 7 CFR 319.75 *et seq.*, "Subpart—Khapra Beetle."

Phytosanitary Certificate Requirement for All Imported Produce

We are considering requiring a phytosanitary certificate to accompany all shipments of imported produce, both commercial shipments and produce

brought into the United States by individual travelers.

Historically, we have not required a phytosanitary certificate for imports of fresh produce because, given the volume of produce entering the United States, we felt that we could provide adequate protection for U.S. agriculture by having well-trained United States Department of Agriculture (USDA) personnel inspect all imported produce. Port of entry inspection by our officers was, and continues to be, an important safeguard to which all imported produce is subject.

Today, from the standpoint of quarantine control, the picture of produce importations is changing dramatically. The number of foreign travelers continues to increase. The amount of produce they bring with them likewise continues to increase, and the pest risk inherent in such importations may well have increased. Commercial importations also continue to increase in quantity and variety of product.

At the same time, foreign Ministries of Agriculture are increasingly able to provide phytosanitary export inspection and certification. We believe that the availability and overall quality of these activities has improved, partly as a result of our International Services programs abroad.

Imported produce presents a relatively high risk of introducing exotic plant pests. Produce brought by travelers is particularly dangerous because:

- The origin of the produce is often difficult to determine.
- The produce is often grown in dooryards with little or no pest control.
- Travelers bring noncommercial varieties with unknown susceptibility to pests and diseases.
- The fruits are often ripe or overripe and therefore particularly susceptible to infestations.
- Historically, decisions to allow importation of produce were based on an evaluation of the pest risk associated with commercial production, not backyard production.

In addition to the above, we now face increasing restrictions on the number of personnel we can devote to inspecting produce imports. It appears that these restrictions will be of long duration if not permanent. We are finding it increasingly difficult to provide the level of quarantine security we feel is needed. To a significant extent, a phytosanitary certificate requirement is an effective augmentation to inspection.

The phytosanitary certificate requirement would provide a significant measure of protection against the introduction of exotic plant pests. This